

## **REMARKS**

This is a full and timely response to the outstanding non-final Office Action mailed March 26, 2003. Reconsideration and allowance of the application and presently pending claims are respectfully requested.

### **Present status of Patent Application**

Upon entry of the amendments in this response, claims 1-2, 11, and 15-31 remain pending in the present application. More specifically, claims 1-2, 15, and 18-19 are currently amended. These amendments are specifically described hereinafter. Claims 3-10 and 12-14 are cancelled without prejudice, waiver, or disclaimer. Applicant has canceled claims 3-10 and 12-14 merely to reduce the number of disputed issues and to facilitate early allowance and issuance of other claims in the present application. Applicant reserves the right to pursue the subject matter of these claims in a continuing application, if Applicant so chooses, and does not intend to dedicate the canceled subject matter to the public. Claims 20-31 have been newly added. It is believed that the foregoing amendments add no new matter to the application. Reconsideration and allowance of the application and presently pending claims are respectfully requested.

#### **A. Office Action remarks by Examiner**

##### **a) Remarks regarding claims**

The non-final Office Action states that Applicant's election with traverse of species I in Paper No. 5 is acknowledged, and that the Applicant has correctly pointed out that claim 1 is the generic claim. The Office Action further states that the Examiner disagrees with Applicant's assertion that claim 14 reads on figure 1, because in the Examiner's opinion claim 14 reads on

figure 3. The Examiner thereby asserts that claims 1, 6, 10, and 12-17 have been withdrawn from further consideration.

**b) Response to the Statement of the Office Action**

Claim 14 is cancelled without waiver, disclaimer or prejudice, thereby rendering moot its association with either of the two referenced figures. With reference to Examiner's assertion that claims 1, 6, 10, and 12-17 have been withdrawn from further consideration, Applicant respectfully traverses this objection with reference to claims 1 and 15-17.

Claims 6, 10, and 12-14 are cancelled without waiver, disclaimer or prejudice, thereby abiding by Examiner's assertion that they have been withdrawn from further consideration. Claim 1 has already been accepted in the Office Action as the pending generic claim, while claims 15-17 comprise an independent claim 15 from which claims 16-17 depend. Independent claim 15 falls under species I, which the Applicant's has elected with traverse. Applicant requests that amended claim 15 and claims 16-17 be reconsidered and placed in allowance. In addition, claims 20-31 are newly added to further define the invention, and are allowable for at least the same or similar reasons that claims 1-2, 11, and 15-19 are allowable.

**c) Remarks regarding drawings**

The non-final Office Action states that the drawings are objected to under 37 CFR 1.83(a), because the longitudinal axis as recited in claim 8 is not shown in the drawings. Claim 8 has been cancelled without waiver, disclaimer or prejudice. Furthermore, the term longitudinal axis is not used in any of the pending claims, thereby rendering moot the objection to the drawings.

**B. Claim Rejections - 35 U.S.C. § 112**

**a) Statement of the Rejection**

Claims 1-5, 7-9, and 11 have been rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

**b) Response to the Rejection**

Claim 1 was rejected as the office action states that “it is not understood which disclosed location the “narrow at an apex portion” in line 7 is being referred.” Additionally, the office action states that in line 7, “such as” is vague and indefinite. Although respectfully disagreeing that the claim was indefinite, the terms “narrow at an apex portion” and “such as” have been eliminated in Amended claim 1. Consequently, Applicant requests that rejection of claim 1 be withdrawn.

The Office Action also states that claim 5 has been rejected because “said substantially arcuately shaped outer surface” lacks antecedent basis. The Office Action also states that “in claim 8, line 3 it appears that the applicant attempts to redefine the number of massage member. In line 5, “substantially V-shaped” is misdescribed, see figure 1.” The Office Action further states that “claims 4 and 9 are redundant to claim 1.”

Claims 3-5 and 7-9, have been cancelled without waiver, disclaimer or prejudice, thereby rendering moot Examiner’s objection to claims 3-5 and 7-9. Additionally, pending claims 2 and 11 are dependent upon currently amended claim 1, and consequently claims 2 and 11 incorporate the claim elements of claim 1. Therefore, Applicant requests that rejection of claims 2 and 11 be withdrawn.

**C. Claim Rejections - 35 U.S.C. § 103**

**a) Statement of the Rejection**

Claims 1-5, and 7-9 have been rejected under 35 U.S.C. 103(a), as being unpatentable over Kuosawa (JP06-47082).

**b) Response to the Rejection**

Independent claim 1 was rejected as Kurosawa allegedly discloses “a foot massager comprising a base 10, rigid massage members (20, 22), and mounting members 13 fixed to the bottom surface of the base...” Kurosawa’s invention titled “Tile panel for stimulating sole of foot” is used upon the sole of a user’s foot, while Applicant’s invention is used upon “deep skeletal muscle fasciculi endomysium.” Persons of ordinary skill in the art will recognize that the sensitivity of the muscles, as well as the muscle structure of the sole is distinctly different from the sensitivity and structure of muscles in other parts of the human body. It will also be recognized that the shape and size of a massaging member is significantly influenced by the sensitivity and structure of muscle and/or tissue to be engaged for massage.

Currently amended claim 1 recites in pertinent part, “a substantially ellipsoid arc shape handle” and “the substantially ellipsoid arc shape of each member together with the circular cross-section of each member, enables said pair of massage members when engaged to deep skeletal muscle fasciculi endomysium, to capture deep myofibril length of tissue of the muscle fasciculi endomysium and isolate parallel portions of tissue of the muscle fasciculi endomysium” (Emphasis Added). Applicant respectfully asserts that Kurosawa does not teach at least the emphasized elements of currently amended claim 1. Consequently, Applicant requests that rejection of claim 1 be withdrawn.

Claim 2 was rejected as the Office Action stated in pertinent part, that “the feature of choosing a particular shaped base, i.e., kidney-shape, is considered as an obvious design choice..” Currently amended claim 2 omits the term “base is substantially kidney shaped,”

and adds in pertinent part, “said pair of massage members are configured in a substantial V-shape, with a gap disposed between the proximal ends of the two members of the V-shape, and wherein the substantially ellipsoid arc shaped handle enables a user to carry the device” (Emphasis Added). Applicant respectfully submits that Kurosawa does not teach at least the emphasized elements of currently amended claim 2. Consequently, Applicant requests that rejection of claim 2 be withdrawn.

Claims 3-5 and 7-9, have been cancelled without waiver, disclaimer or prejudice, thereby rendering moot Examiner’s objection to claims 3-5 and 7-9.

**c) Statement of the Rejection**

Claims 11, 18, and 19 have been rejected under 35 U.S.C. 103(a), as being unpatentable over Kuosawa in view of Voykin (4,852,553).

**d) Response to the Rejection**

Currently amended claim 11 is directly dependent on currently amended claim 1, and consequently claim 11 incorporates the claim elements of currently amended claim 1. Therefore, Applicant requests that rejection of claim 11 be withdrawn.

Currently amended claim 18 recites in pertinent part, “for manipulating deep skeletal muscle fasciculi,” which is not taught by Kurosawa and is not obvious in view of Voykin. Therefore, Applicant requests that rejection of claim 18 be withdrawn.

Currently amended claim 19 recites in pertinent part, “wherein said pair of massage members are configured in an approximate L-shape with a gap disposed between the proximal ends of the two members of the L-shape” (Emphasis Added). Applicant respectfully submits that Kurosawa in view of Voykin does not teach at least the emphasized elements of currently amended claim 19. Consequently, Applicant requests that rejection of claim 19 be withdrawn.

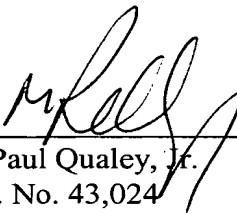
**Prior Art Made of Record**

The prior art made of record has been considered, but is not believed to affect the patentability of the presently pending claims.

**CONCLUSION**

In light of the foregoing amendments and for at least the reasons set forth above, Applicant respectfully submits that all objections and/or rejections have been traversed, rendered moot, and/or accommodated, and that claims 1-2, 11, and 15-31 are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney at (770) 933-9500.

Respectfully submitted,

  
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